

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

vs.

**MARCO ANTONIO RUIZ-
CARRENO**

Defendant.

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Criminal No. H-20-cr-448

PLEA AGREEMENT

The United States of America, by and through Ryan K. Patrick, United States Attorney for the Southern District of Texas, and Michael E. Day, Assistant United States Attorney, and the defendant, Marco Antonio Ruiz-Carreno (“Defendant”), and Defendant’s counsel, pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

Defendant's Agreement

1. Defendant agrees to plead guilty to Count One of the Indictment. Count One charges Conspiracy to Transport Aliens, in violation of Title 8 U.S.C. § 1324(a)(1)(A)(v)(I), 1324(a)(1)(A)(ii), and 1324(a)(1)(B)(i). Defendant, by entering this plea, agrees that he/she is waiving any right to have the facts that the law makes essential to the punishment either charged in the indictment, or proved to a jury or proven beyond a reasonable doubt.

Punishment Range

2. The statutory maximum penalty for violation of Title 8, United States Code, Sections 1326(a) and (b)(1), is imprisonment of not more than ten (10) years and a fine of not more than \$250,000. Additionally, Defendant may receive a term of supervised release after imprisonment of not more than three (3) years. *See* Title 18, United States Code, Sections 3559(a) and 3583(b)(2). Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release which may be imposed as part of his sentence, then Defendant may be imprisoned for up to two (2) years, without credit for time already served on the term of supervised release prior to such violation. *See* Title 18, United States Code, Sections 3559(a) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

3. Pursuant to Title 18, United States Code, Section 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order, payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Immigration Consequences

4. Defendant recognizes that pleading guilty may have consequences with respect to his/her immigration status. Defendant understands that if he/she is not a citizen of the

United States, by pleading guilty he/she may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant understands that if he/she is a naturalized United States citizen, pleading guilty may result in immigration consequences, such as denaturalization and potential deportation or removal from the United States. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty, and Defendant affirms that he/she wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction.

Waiver of Appeal and Collateral Review

5. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, Section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or "collaterally attack" the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, Section 2255. Defendant's knowing and voluntary waiver of the right to appeal or collaterally attack the conviction and sentence includes waiving the right to raise on appeal or on collateral review any argument that (1) the statute(s) to which the defendant is pleading guilty is unconstitutional and (2) the admitted conduct does not fall within the scope of the statute(s). In the event Defendant files a notice of appeal

following the imposition of the sentence or later collaterally attacks his conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

6. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that he/she may have received from his/her counsel, the United States or the Probation Office, is a prediction and not a promise, did not induce his/her guilty plea, and is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are “effectively advisory” to the Court. *See United States v. Booker*, 543 U.S. 220 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range.

7. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

Defendant’s Agreements Under Fast Track

8. Defendant agrees to each of the following:

- (a) To not litigate detention;
- (b) To not file any pre-trial motions;

- (c) To enter a plea of guilty to the Indictment by the date of the first status or first pre-trial hearing;
- (d) To not request a variance under 18 U.S.C. § 3553(a); and
- (e) To not request a downward departure under the United States Sentencing Guidelines

The United States' Agreements

9. The United States agrees to each of the following:

- (a) If Defendant pleads guilty to Count One of the indictment and persists in that plea through sentencing, and if the Court accepts this plea agreement, the United States will move to dismiss any remaining counts of the indictment at the time of sentencing;
- (b) If the Court determines that Defendant qualifies for an adjustment under section 3E1.1(a) of the United States Sentencing Guidelines, and the offense level prior to operation of section 3E1.1(a) is 16 or greater, the United States will move under section 3E1.1(b) for an additional one-level reduction because Defendant timely notified authorities of his or her intent to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources more efficiently;
- (c) If the Defendant fulfills his obligations under paragraph 8 of this Agreement, the United States will agree to move for a two level downward departure under U.S.S.G. § 5K3.1; and
- (d) If the Defendant fulfills his obligations under paragraph 8 of this Agreement, the United States will not oppose a sentence at the low end of the guideline range.

Agreement Binding - Southern District of Texas Only

10. The United States Attorney's Office for the Southern District of Texas agrees that it will not further criminally prosecute Defendant in the Southern District of Texas for offenses arising from conduct charged in the indictment. This plea agreement binds only the United States Attorney's Office for the Southern District of Texas and Defendant. It

does not bind any other United States Attorney's Office. The United States Attorney's Office for the Southern District of Texas will bring this plea agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices, if requested.

United States' Non-Waiver of Appeal

11. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, Section 3553(a); and
- (e) to appeal the sentence imposed or the manner in which it was determined.

Sentence Determination

12. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, United States Code, Section 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing

judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees that the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

Rights at Trial

13. Defendant understands that by entering into this agreement, he/she surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

- (a) If Defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and his/her attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his/her own behalf. If the witnesses for Defendant would not appear voluntarily, he/she could require their attendance through the subpoena power of the court; and
- (c) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, he/she could testify on his/her own behalf.

Factual Basis for Guilty Plea

14. Defendant is pleading guilty because he is in fact guilty of the charges contained in Count One of the indictment. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others would be offered to establish Defendant's guilt:

1. On September 7, 2020, at approximately 7:45 P.M., Oklahoma State Trooper Douglas George was patrolling Interstate 35 northbound near mile marker 53, Murray County, when he observed a traffic violation. Trooper George conducted a video recorded traffic stop of the vehicle, a silver 2015 Ford F-150. Upon approaching the vehicle, he observed that the passengers exceeded the vehicle's seat belt capacity, with three occupants in the front and four in the rear.
2. The driver was identified as the Defendant Marco Antonio Ruiz-Carreno through a Baja California driver's license. Upon being questioned, the Defendant gave inconsistent answers as to the vehicle's owner and could not produce proof of insurance. The Defendant eventually stated the vehicle was owned by his boss, "Ruben". The Defendant stated the group was travelling from Houston, Texas to Oklahoma City, Oklahoma to work in construction for two weeks. The Defendant did not know the employer's name or the location of the worksite.
3. Trooper George noted the group did not have luggage in the vehicle. Trooper George asked the passengers for identification, and none could provide any. Trooper George contacted HSI Houston, who conducted DHS database checks of the information provided, discovering at least two subjects had been previously removed from the United States, and none of the other five had records indicating they were United States citizens or aliens with permission to enter, remain in, or pass through the United States.
4. Prior to transport to the Murray County Jail, the Defendant granted consent to search the vehicle, and troopers discovered indicia of smuggling. Panels on the inside of the vehicle were loose, the straps of the gas tank appeared to have been moved, the bolts on the gas tank straps showed indication of removal and the hoses connected to the tank appeared to be new.
5. When Trooper George further inquired about the group, the Defendant admitted they were all illegal aliens and stated that is who most of the workers are now. HSI Special Agents and ERO Deportation Officers interviewed the group, determining all were present in the United States without admission and subsequently processed them for

removal from the United States. All seven occupants stated the trip began in Houston, Texas, and the six passengers identified the Defendant as the driver.

6. Material Witness Jose Luis Gongora-Yah, a smuggled alien from Mexico, stated the Defendant picked him up at an apartment complex in Houston. Gongora-Yah stated friends paid an unknown amount to a coconspirator of the Defendant to be smuggled from Reynosa, Tamaulipas to San Francisco, California.
7. Material Witness Felipe de Jesus Tapia-Barrera, a smuggled alien from Mexico, stated the Defendant picked him up at a gas station in Houston. Tapia-Barrera's family paid \$8,500 to a coconspirator of the Defendant to be smuggled from Piedras Negras, Coahuila to San Jose, California.
8. The defendant knowingly conspired with others to transport Gongora-Yah and Tapia-Barrera within the United States with intent to further the aliens' unlawful presence.

Breach of Plea Agreement

15. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals, or disposes of assets in violation of this plea agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.



Complete Agreement

16. This written plea agreement, including the attached addendum of Defendant and his/her attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations have been made by

the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him/her and that he/she is pleading guilty freely and voluntarily because he/she is guilty.

17. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on November 4, 2020

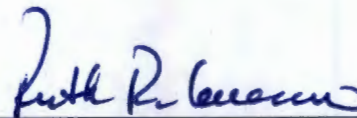


Marco Antonio Ruiz-Carreño
Defendant

Subscribed and sworn to before me on 11/4/2020,
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DAVID J. BRADLEY, Clerk
UNITED STATES DISTRICT CLERK

By:



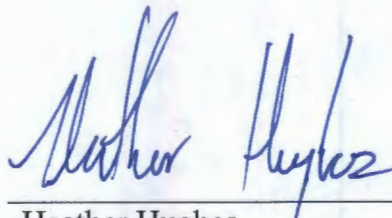
Deputy United States District Clerk

APPROVED:
RYAN K. PATRICK
United States Attorney

BY:



for Michael E. Day
Assistant United States Attorney
Southern District of Texas



Heather Hughes
Attorney for Defendant

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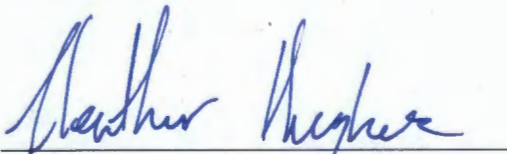
Defendant.

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Criminal No. H-20-cr-448

PLEA AGREEMENT – ADDENDUM

I have fully explained to Defendant his/her rights with respect to the pending indictment. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and Policy Statements and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this plea agreement with Defendant. To my knowledge, Defendant's decision to enter into this agreement is an informed and voluntary one.


Heather Hughes
Attorney for Defendant

11-4-20

Date

I have consulted with my attorney and fully understand all my rights with respect to the indictment pending against me. My attorney has fully explained, and I understand, all

my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case.

I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

A handwritten signature in blue ink, appearing to read 'MARCO ANTONIO RUIZ-CARRENO', written over a horizontal line.

Marco Antonio Ruiz-Carreno
Defendant

11-4-20

Date